IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.743 OF 2005

M/s.R.T.Enterprises ..Petitioners.

Vs.

Kalpana Golapkar & Ors. ..Respondents.

....

Mrs.Meena Doshi for the Petitioners.

Mr.P.G.Lad for the Respondents.

...

**CORAM : DR.D.Y.CHANDRACHUD, J.**

4th April, 2005.

P.C. :

1. The Labour Court in a reference under Section 10 of the Industrial Disputes Act, 1947 granted reinstatement with 60% backwages and continuity of service from 1st March, 1999. The Respondents were appointed as sweepers and cleaners by the Petitioner. The witness who deposed on behalf of the Petitioner specifically admitted that the workmen were not informed in writing that they were appointed on a casual basis or under a contract which the Petitioner had with the NFDC for a specified term. The witness in fact admitted that no letter of appointment was given to the workmen.

The witness admitted that not even before the Labour Officer in conciliation was the case of the employer to the effect that the workmen were told or that they had agreed to an employment on a casual basis. Admittedly, no retrenchment compensation was paid under Section 25-F of the Industrial Disputes Act, 1947. In these circumstances, the finding which has been arrived at on the basis of the evidence by the Labour Court is that the workmen were not appointed on fixed term contracts and that therefore, their termination without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 is unlawful. At the same time, an award of 60% backwages has been made. together with reinstatement.

2. Two submissions have been urged before the Court. The first is that these were fixed term appointments and that therefore, the termination will not attract the provisions for the payment of retrenchment compensation. There is no merit in the submission for the reasons already indicated earlier. Admittedly, there was no letter of appointment. The witness for the Petitioner squarely admitted in the course of cross examination that the workers were neither given an

appointment letter nor were they informed of the fact that the appointment was on a fixed term. The second submission was that the claim of the workers essentially was against the Nehru Centre and not against the Petitioner. There is no merit in this submission as well. In the statement of claim the prayer in paragraph 8 was specifically for a direction to the Petitioner to reinstate the workmen, with full backwages and continuity of service. The contention of the Respondent workmen was that the Petitioner was allegedly a contractor under whom they had been working in the post of sweeper for a period of over three years on last drawn wages of Rs.2,198/-. The principal employer was never impleaded as a party to the reference and therefore, there was no occasion for the Court to consider what, if any, relief that the workmen could have availed of against the principal employer. The contract of employment was with the Petitioner and once the termination has been held to be invalid as it was, the Labour Court was correct in the final order that was passed. In the circumstances, there is no merit in the Petition which is accordingly dismissed.